

STATEMENT OF
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BEFORE JOINT HEARING OF
SEAPOWER AND STRATEGIC AND CRITICAL
MATERIALS SUBCOMMITTEE
AND
INVESTIGATIONS SUBCOMMITTEE
OF
COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES
April 18, 1985

Chairman Bennett, Chairman Nichols, and Members of the
Subcommittees:

I welcome this opportunity to address an issue that is an important concern for all of us: the rules governing the employment of military and civilian employees of the Department of Defense after they leave Government service. In recent months we have become increasingly aware that the movement of persons between Government and industry can significantly affect public perception of the integrity of Government employees.

News media reports have noted that, upon departure from the Department of Defense, some officers and civilians who have worked in the procurement field, accept employment with contractors with whom they may have dealt as DoD representatives. There is concern that such postgovernment employment may not be in the interest of the Government and may invite corrupt practices.

The leadership of the Department of Defense takes these concerns very seriously. We believe that it is essential to maintain the highest standards of integrity. We pledge our support to the development and enforcement of appropriate standards and appreciate the opportunity to explore the problem that is afforded by this joint hearing.

Before discussing the need for new legislation it may be helpful to review the existing rules relating to the ethical conduct of employees. It is clear that your concerns and ours relate to conduct both during and subsequent to government employment and that the propriety of employment after leaving Government service is inherently connected to the individual's conduct both before and after departing. Let me briefly summarize the rules. Four statutes relate to conduct during government service:

1. 18 U.S.C. § 203 prohibits officers and employees from receiving or seeking compensation for services rendered in connection with any particular matter in which the United States is a party or has a direct and substantial interest. This section reaches situations in which the judgment of a Government agency might be influenced by reason of payments to a Government employee.

2. 18 U.S.C. § 205 prohibits Government personnel from acting as agents for anyone else before a Government agency or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest.

3. 18 U.S.C. § 208(a) requires executive branch personnel to refrain from personal and substantial participation as Government personnel through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any particular matter in which they, their spouses, minor children, partners or, businesses with which they are connected or are seeking employment have a financial interest.

4. 18 U.S.C. § 209(a) prohibits executive branch personnel from receiving any compensation from a private source for their Government service.

Three statutes relate to postgovernment employment conduct:

1. 18 U.S.C. § 207 places the following restrictions on departing officers and employees of DoD (including military personnel):

- Permanent bar. A former Government employee may never serve as another person's representative to the Government on a case, contractual matter or other similar application or proceeding in which he or she partici-

pated "personally and substantially" while a Government employee.

- Two-year bar. For a period of two years after leaving federal service the individual may not serve as another person's representative to the Government on any particular matters which were actually pending under the former employee's "official responsibility" in his or her last year of service.

- Senior Employee, one-year bar. This applies only to persons occupying certain high-level positions that have been designated as "Senior Employee" positions. For one year after leaving federal service, Senior Employees may not represent anyone other than the United States before their former agency on any particular matter pending before or of substantial interest to, the agency.

- Senior Employee, two-year bar on assisting in representation by personal presence. For two years after leaving Government employment, a former Senior

Employee may not assist in the representation of another person by personal presence at an appearance before Government on any particular matter in which he or she personally and substantially participated while in Government.

The last revision of these rules occurred in 1978 after extensive Congressional hearings. Although the employment traffic between DoD and industry was exhaustively reviewed, very few instances of actual abuse were disclosed. The resulting legislation continued to restrict certain representational activities and added the blanket 1-year "cooling off" period for "Senior Employees." It did not prevent Government personnel from accepting employment with firms with whom they had dealt on behalf of the Government, but was focused on representational activity.

2. 37 U.S.C. § 801(b) prohibits retired regular military officers from selling supplies or war materials to the Defense Department and related agencies for a period of three years after retirement.

3. 18 U.S.C. §281 prohibits retired regular military officers permanently from selling to their own former military departments.

The statutes governing standards of conduct are supplemented by a variety of regulations. Most of these are based on an executive order (E.O. 11222, May 8, 1965) and are implemented by regulations promulgated by the Office of Personnel Management (5 C.F.R. Part 735), the Department of Defense (32 C.F.R. Par. 40), and the subordinate components of DoD.

It is the purpose of the regulatory scheme, in the words of the Executive Order, "that employees avoid any action, whether or not specifically prohibited . . . which might result in, or create the appearance of --

- (1) using public office for private gain;
- (2) giving preferential treatment to any organization or person;
- (3) impeding government efficiency or economy;
- (4) losing complete independence or impartiality of action;
- (5) making a government decision outside official channels; or
- (6) affecting adversely the confidence of the public in the integrity of the Government."

The Executive Order and regulations carry out the stated intent by establishing behavioral rules in a variety of areas. Among the limitations on the conduct of DoD officers and

employees that bear directly on matters before these
Subcommittees are the following:

- Gratuities may not be accepted from those who have or seek business with the Department except as to items of nominal value;
- "Inside information" may not be used by DoD personnel to benefit themselves or others;
- Outside employment is prohibited if it interferes with official duties (including the duty of loyalty to the Government interest), or otherwise involves a conflict of interest;
- Government personnel and facilities may only be used for official purposes.
- DoD personnel are prohibited from official dealings with former Government personnel whose participation in the transaction would violate the rules.

The regulations also require the preparation of financial disclosure reports which provide annual reminders to reporting individuals of potential conflicts between personal interests and

official duties. These requirements also provide powerful tools to facilitate the enforcement of the standards of conduct.

With respect to the specific issue of postgovernment employment, there are those who are uncomfortable with the idea of any former Government officer or employee working for a firm that does business with the Government. However, Congress has consistently concluded that this is not improper in and of itself. What is improper and should be firmly prohibited is the present Government employee's use of his/her government position or official influence (i) for personal gain, (ii) to the detriment of the Government, or (iii) in a manner which gives an unfair advantage to a private entity. The existing law prohibits former officers and employees from such improper use of their influence or position. The law has been tailored carefully to balance the right of the individual to try to make a living against the right of the public to be assured that official relationships will not be improperly exploited.

It has been suggested that the movement of DoD personnel into industry increases procurement costs. We have not seen evidence of this nor evidence that DoD officers or employees relax contractor requirements in order to curry favor and gain future employment. I doubt that this is a common practice or a substantial problem. On the contrary, a contractor is more likely to hire a departing DoD official who has aggressively

represented the Government's interests. The assumption that contractor job offers are extended to those who "do not rock the boat" is not based on any evidence that has been made available to us. Furthermore, when such cases are discovered, the law provides adequate tools to punish offenders and hold them accountable for their dishonesty.

The field of Government procurement is administered by a highly complex system of laws and regulations and the products and services procured often are very sophisticated or "state of the art." The management of this complex Government business requires skilled and talented persons. Our ability to attract such persons into Government service will suffer if there are substantial impediments to future employment. Persons with talent will shun procurement and related areas of Government service if they believe they will be unable to apply their skills and experience in future employment. Such disincentive to Government service would apply to all grade levels. Not only will the most capable young individuals fail to apply for entry-level positions, but it may become even more difficult to attract skilled scientists and businessmen for senior appointee positions.

Recently several legislative proposals have been introduced in the Congress. We are willing to work with you and your

staffs in analyzing the impact of these proposals and making constructive suggestions for modification.

In considering whether and to what extent legislative action may be appropriate, the Committee should be advised of several steps being taken within our Department to tighten controls:

- Educational procedures are under review to insure that all personnel are thoroughly familiar with all of the postemployment rules.
- A thorough review of enforcement procedures by all DoD components is under way. We intend to identify and utilize all appropriate methods, within our authority to improve enforcement of the existing rules.
- Other non-legislative options are being explored. For example, more detailed postemployment reporting procedures could be required pursuant to 10 U.S.C. § 2397. Such detailed reports would facilitate the identification of potential violations and would deter offenses. They would also help us to better understand and control the scope of the problem.

Although there is a statutory and regulatory framework to prevent Government officers and employees favoring contractors in order to gain future employment, it must be recognized that many people are uncomfortable with the present situation. In recent testimony before a subcommittee of the Senate Armed Services Committee, the Deputy Secretary of Defense expressed the view that the current law works well to address actual conflicts of interest. He conceded, however, that public confidence in government programs could be enhanced by legislation addressing some issues of appearance. If this could be done without substantially or needlessly circumscribing individual opportunities, it would be a worthwhile effort. There is also some question whether limitations on representational contacts sufficiently circumscribe postgovernment activities. Certainly there are suspicions raised when an individual moves directly from the Government's side to the contractor's side of the same project.

You requested the Department's views on one of the pending legislative proposals, H.R. 272, a bill "to amend the Defense Production Act of 1950, as amended." The bill would add to the Defense Production Act restrictions on any "acquisitions officer" who, within two years after leaving federal employment, accepted compensation from a contractor who had a procurement contract in regard to which the officer personally and substantially had duties during the three years before termination of employment.

The Office of Personnel Management would be obliged to issue advisory opinions with public notice published in the Federal Register.

We are preparing detailed comments that will be submitted for the consideration of the Committee. In the meantime, several key points should be noted. The Department of Defense is concerned that a legislative action of this nature would have consequences far beyond the ills it is intended to remedy. For example, the term "acquisitions officer," as defined in the bill (§ 801(a)(2)), is so broad as to include many officers and employees whose duties may have only peripheral impact on the procurement process or highly remote opportunity for conflict of interest.

The administration of its provisions would add materially to the paperwork burden associated with the procurement process. Many "acquisitions officers" are involved with numerous contracts and contractors at any one time. Because few officers or employees know when they have entered the last three years of their government service it would be necessary for each individual, throughout an entire career in the Government, to keep detailed records of all actions that could come within the scope of this legislation. Agencies also would be required to maintain voluminous records to produce the information required by the Office of Personnel Management in the preparation of its

advisory opinions. We are concerned that these steps would introduce significant new impediments to talented persons considering Government service.

I understand that the Senate Armed Services Committee has developed a legislative proposal that will be reported out with the DoD Authorization Bill. We have not seen a final version of that language but its features have been summarized for us. It focuses attention on the actions of officers and employees while they are with DoD, requiring recusal before discussing employment opportunities with firms they deal with officially. It also strengthens postgovernment reporting procedures and gives the Secretary of Defense authority to impose appropriate monetary penalties. Your subcommittees may find this proposal a worthwhile starting point for your deliberations.

Finally, let me assure you that at the Department of Defense we share your desire to maintain the Department's integrity. But it is important that legislative action be no more sweeping than necessary. There is substantial movement of individuals within the various industry groups, even among competing organizations. The exchange of ideas and experience generally is beneficial. We often find it advantageous in our programs to bring people into the Department for limited periods to capitalize on their background and experience. Overall, I believe that the movement of individuals between Government and industry is far more often